

Amendment No. 1 to SB1885

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 1885*

House Bill No. 1766

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 34-6-302(b), is amended by deleting the subsection in its entirety and by substituting instead the following as a new subsection (b):

(b) The power of attorney for care of the minor child shall be signed by the parent and acknowledged before a notary public or two (2) witnesses who shall sign and date their signatures concurrently and in each other's presence.

SECTION 2. Tennessee Code Annotated, Title 34, Chapter 6, is amended by adding the following as a new part 4:

34-6-401.

(a) As used in this part:

(1) "Health care" has the same meaning as defined in § 68-11-1802 of the Tennessee Health Care Decisions Act;

(2) "Health care decisions" has the same meaning as defined in § 68-11-1802 of the Tennessee Health Care Decisions Act;

(3) "Health care institution" has the same meaning as defined in § 68-11-1802 of the Tennessee Health Care Decisions Act;

(4) "Health care provider" has the same meaning as defined in § 68-11-1802 of the Tennessee Health Care Decisions Act;

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(5) "In loco parentis" means "in the place of a parent" and refers to the legal responsibility taken by a person or organization to assume some of the functions and responsibilities of a parent or legal guardian; and

(6) ""Reasonably available" has the same meaning as defined in § 68-11-1802 of the Tennessee Health Care Decisions Act.

(b)

(1) Health care decisions for an unemancipated minor child may be obtained from persons with authority to consent, including the appointed guardian or legal custodian, or the individual to whom the minor's custodial parent or legal guardian has given a signed authorization to make health care decisions through a military power of attorney or a limited power of attorney for the care of such minor child.

(2)

(A) When an individual listed in subdivision (b)(1) is not reasonably available, the following persons may stand in loco parentis for purposes of making health care decisions for an unemancipated minor in order of priority:

(i) Noncustodial parent;

(ii) Grandparent;

(iii) Adult sibling;

(iv) Stepparent;

(v) Another adult family member; or

(vi) Competent adult.

(B) The treating health care provider, an employee of the treating health care provider, an operator or employee of a health care institution, and an employee of an operator of a health care institution shall not stand in loco parentis.

(C) A person standing in loco parentis shall sign an in loco parentis affidavit under penalty of perjury stating that the person has taken responsibility for the health care of the minor child.

(D) The affidavit shall expire sixty (60) days from the date of execution, and may be extended an additional sixty (60) days.

(c) The decision of a person standing in loco parentis to make health care decisions for an unemancipated minor shall be superseded by a prior or subsequent, timely given, contravening decision of the minor's custodial parent, legal custodian, or legal guardian.

(d)

(1) The parent, legal guardian, or legal custodian may, but is not required to, convey in loco parentis standing to another adult if there is no order of any court in effect from any jurisdiction, including an order of protection, custody order, or parenting plan, that would prohibit the parent, legal guardian, legal custodian or the person acting in loco parentis from exercising that power. A person shall not stand in loco parentis or make health care decisions for an unemancipated minor if there is an order by any court in effect from any jurisdiction that would prohibit the person from doing so, including an order of protection,

custody order, or parenting plan, or in the circumstances described in § 33-3-111.

(2) A person standing in loco parentis may make health care decisions for a person who is an unemancipated minor to undergo or receive health care which are not prohibited by law and which are under the supervision of and suggested, recommended, prescribed, or directed by a healthcare provider licensed to practice in this state.

(3) A person standing in loco parentis may also exercise existing parental rights to obtain medical records and information.

(e) Notwithstanding any other provision of this section, a person standing in loco parentis may not consent on behalf of an unemancipated minor to:

(1) Withholding or withdrawing life sustaining procedures;

(2) Abortion;

(3) Sterilization;

(4) Psychosurgery;

(5) Admission to a mental health facility for a period longer than the durational limits permitted in § 33-3-606; or

(6) Mental health treatment for a minor sixteen (16) years old or older, pursuant to § 33-8-202.

(f) In loco parentis standing:

(1) Does not affect the rights and responsibilities of an unemancipated minor's parents or legal guardian or legal custodian regarding the care, custody, and control of the minor;

(2) Does not affect the rights of an unemancipated minor to make health care decisions in accordance with existing law; and

(3) Does not grant legal custody of the minor or authority to consent to the marriage or adoption of the minor.

(g) Except for acts of willful misconduct or gross negligence, a person standing in loco parentis who makes health care decisions for an unemancipated minor shall not be liable for damages arising from providing consent to such health care.

(h) A health care provider who has no actual knowledge of facts contrary to those stated in an authorization affidavit and who relies on a written instrument that is consistent with the requirements of subsection (a) and provides health care to an unemancipated minor shall not incur civil liability, criminal culpability, or professional disciplinary action for treating an unemancipated minor without legal consent if a reasonable healthcare provider would have relied on the written instrument under the same or similar circumstances. Nothing in this section requires a physician, dentist, mental health professional, or other healthcare provider to rely on a written instrument or to accept health care decisions from a person standing in loco parentis.

(j) An authorization affidavit does not confer dependency for health care coverage or insurance purposes.

SECTION 3. This act shall take effect on July 1, 2014, the public welfare requiring it.